IN THE CARIBBEAN COURT OF JUSTICE

Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No. GYCV2017/003

Guyana Civil Appeal No. 106 of 2006

BETWEEN

KOWSAL NARINE	**APPELLANT**

AND

DEONARINE NATRAM	**1ST RESPONDENT**
ASHBOURNE LIPTON CHAN	**2ND RESPONDENT**
FOSTER GILFORD CHAN	**3RD RESPONDENT**

Before The Honourables **Mr. Justice Adrian Saunders, PCCJ**
Mr. Justice David Hayton, JCCJ
Mr. Justice Winston Anderson, JCCJ
Mme. Justice Maureen Rajnauth-Lee, JCCJ
Mr. Justice Denys Barrow, JCCJ

Appearances:

Mr. C.V Satram, Mr. R. Satram, Mr. Mahendra Satram and Mr. Visal Satram for the Appellant

Mr. Mohabir Anil Nandlall and Mr. Manoj Narayan for the 1st Respondent

JUDGMENT
of
The Honourable Justice Saunders, President
and the Honourable Justices Hayton, Anderson,
Rajnauth-Lee and Barrow, Judges

Delivered by
The Honourable Mr. Justice Saunders, President
on the 7th day of August 2018

On Written Submissions

Introduction

[1] By judgment dated 10th May 2018, the CCJ settled a decades-long land dispute between two brothers, Kowsal Narine and Deonarine Natram. In a decision delivered in open Court, which had previously been circulated to the parties, the Court ruled that the appellant, Kowsal Narine, had been in sole and undisturbed possession of the land for more than twelve years since 1st June 1991 and that any title, right or interest of the first respondent, Deonarine Natram, had been extinguished pursuant to the Title to Land (Prescription and Limitation) Act ("the Act"). .

[2] On 4th June 2018 Deonarine Natram ('the Applicant') filed a Notice of Application asking that a) the decision dated 10th May 2018 be set aside and/or amended and/or varied; b) a rehearing of the appeal or, alternatively, that leave be granted allowing further arguments to be presented by the parties; and c) any other orders which may be necessary to prevent a miscarriage of justice be granted. In his Affidavit supporting the Application, he points out that in its decision the Court did not make a determination on the issue of costs. As such, he argued, the Court is not *functus officio* since the final orders have not been made, drawn up, entered or otherwise perfected.

[3] This Court recently addressed the question of when a judgment of a court is final in *The Queen v Gilbert Henry [2018] CCJ 21 (AJ)*. The Court considered the extensive jurisprudence on the point before affirming the following principles:

> "a) An oral decision or order made by a judge is normally binding from the moment it is delivered. It has legal force and parties are entitled to rely upon it….
> b) The court retains a residual jurisdiction to vary its earlier decision until the order of the court is recorded or otherwise perfected. That jurisdiction is exercisable on narrowly defined principles. There must be exceptional circumstances warranting its exercise. A relevant factor in deciding whether the jurisdiction should be exercised is whether any party has acted upon it to his or her detriment, especially in a case where it is expected that he or she may do so before the order is formally drawn up. The court should normally invite submissions (which may be written submissions) from the parties affected by the earlier decision and should in its subsequent decision, refer to the

> earlier decision and explain its reasons for varying or overturning it; and
> c) The court is functus officio once the order has been recorded or otherwise perfected. Thereafter remedy for errors in the judicial process lies in the appellate process."

[4] We agree with the Applicant's submission that, as the order in this matter has not been perfected, the Court is not *functus officio* and it is open to us to exercise our residual jurisdiction to reopen this appeal. Accordingly, we invited further written submissions by the parties. These were received on July 31st.

[5] As we stated in *Gilbert Henry*, this Court will only exercise its residual jurisdiction to inquire into an earlier decision where there are exceptional circumstances for doing so. Having considered the application, we do not find that it discloses any such exceptional circumstances.

[6] The alleged exceptional circumstance concerned whether the Court's judgment was in error because application of s 22 of the Act stopped time from running in Kowsal Narine's favour.

[7] Section 22 is headed 'Provisions as to set off or counterclaim'. It states:

> "For the purposes of this Act, any claim by way of set-off or counter-claim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counter-claim is pleaded."

[8] It was submitted that a) in this case there was a counterclaim; b) the effect of the filing of the counterclaim was to stop time from running in Kowsal Narine's favour and c) the Court's judgment erroneously neglected to take account of a) and b) above.

[9] It is the case that there *was* a counterclaim in the appeal but there was no claim made in that counterclaim to which section 22 was alleged to be applicable. Without determining its likely success, such a claim may have been made if, for example, the counterclaim contained a specific claim for possession. But no such claim having

been made, as the Applicant concedes, there simply is no basis upon which to allege that the exceptional circumstances claimed have arisen that justify the Applicant reopening the judgment. It follows that the application must fail. The litigation on the interpretation of section 22 must remain for another day.

Disposal

[10] The application is dismissed with costs awarded to the Respondent who was the Appellant in the substantive case.

/s/ A. Saunders

The Hon Mr Justice A Saunders (President)

/s/ D Hayton

The Hon Mr Justice D Hayton

/s/ W Anderson

The Hon Mr Justice W Anderson

/s/ M Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D Barrow

The Hon Mr Justice D Barrow